MONTANA LEGISLATIVE HISTORY

Chapter 396 ~~19~~ 2003

Bill H 647 S _____ Original bill & history X C

H. Committee on HUMAN SERVICES			S. Committee on PUBLIC HEALTH		
Hearing Date(s)	2/19	X C	Hearing Date(s)	3/12	X C
& EXEC. ACTION		C	EXEC. ACTION	3/21	X C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Bill Draft Number: LC1649
Bill Type - Number: HB 647
Short Title: Revise uniform health care information act
Primary Sponsor: Bill Thomas

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 56

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/18/2003			
(H) Signed by Governor	04/18/2003			
(H) Transmitted to Governor	04/12/2003			
(S) Signed by President	04/11/2003			
(H) Signed by Speaker	04/11/2003			
(C) Sent to Printing	04/10/2003			
(H) Returned from Enrolling	04/10/2003			
(H) Sent to Enrolling	04/09/2003			
(H) 3rd Reading Passed as Amended by Senate	04/09/2003	99	0	
(H) Scheduled for 3rd Reading	04/09/2003			
(H) 2nd Reading Senate Amendments Concurred	04/08/2003	99	0	
(H) Scheduled for 2nd Reading	04/08/2003			
(S) Returned to House with Amendments	04/01/2003			
(S) 3rd Reading Concurred	04/01/2003	48	2	
(S) Scheduled for 3rd Reading	04/01/2003			
(C) Sent to Printing	03/31/2003			
(S) 2nd Reading Concurred as Amended on Voice Vote	03/29/2003	49	0	
(S) 2nd Reading Motion to Amend Carried on Voice Vote	03/29/2003	49	0	
(S) Scheduled for 2nd Reading	03/29/2003			
(C) Sent to Printing	03/25/2003			
(S) Committee Report--Bill Concurred as Amended	03/25/2003			(S) Public Health, Welfare and Safety
(S) Committee Executive Action--Bill Concurred as Amended	03/25/2003	7	0	(S) Public Health, Welfare and Safety
(S) Hearing	03/12/2003			(S) Public Health, Welfare and Safety
(S) Referred to Committee	02/26/2003			(S) Public Health, Welfare and Safety
(S) First Reading	02/26/2003			

(H) Transmitted to Senate	02/25/2003			
(H) 3rd Reading Passed	02/25/2003	99	1	
(H) Scheduled for 3rd Reading	02/25/2003			
(H) 2nd Reading Passed	02/24/2003	95	3	
(H) Scheduled for 2nd Reading	02/24/2003			
(H) Committee Report--Bill Passed	02/20/2003			(H) Human Services
(H) Committee Executive Action--Bill Passed	02/20/2003	13	0	(H) Human Services
(H) Hearing	02/19/2003			(H) Human Services
(H) Hearing Canceled	02/17/2003			(H) Human Services
(C) Introduced Bill Text Available Electronically	02/15/2003			
(H) Referred to Committee	02/15/2003			(H) Human Services
(H) First Reading	02/15/2003			
(H) Introduced	02/15/2003			
(C) Draft Delivered to Requester	02/12/2003			
(C) Draft Ready for Delivery	02/12/2003			
(C) Draft in Assembly/Executive Director Review	02/12/2003			
(C) Draft in Final Drafter Review	02/11/2003			
(C) Draft in Input/Proofing	02/11/2003			
(C) Draft to Drafter - Edit Review [CMD]	02/11/2003			
(C) Draft in Edit	02/11/2003			
(C) Draft in Legal Review	02/10/2003			
(C) Draft to Requester for Review	02/10/2003			
(C) Draft to Requester for Review	02/07/2003			
(C) Draft Back for Redo	02/06/2003			
(C) Bill Draft Text Available Electronically	02/05/2003			
(C) Draft in Input/Proofing	02/05/2003			
(C) Draft to Drafter - Edit Review [CMD]	02/04/2003			
(C) Draft in Edit	02/04/2003			
(C) Draft in Legal Review	02/03/2003			
(C) Draft to Requester for Review	01/28/2003			
(C) Draft Request Received	12/05/2002			

Sponsor, etc.

Sponsor, etc.	**Last Name/Organization**	**First Name**	**Mi**
Requester	Brueggeman	John	
Drafter	Petesch	Greg	
Primary Sponsor	Thomas	Bill	

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Privacy		Simple	PRIV
Health Care Services (see also: Health)		Simple	HLTC

Additional Bill Information

Probable Fiscal Note: No
Preintroduction Required: N
Session Law Ch. Number: 396
DEADLINE
Category: General Bills
Transmittal Date: 02/28/2003
Return (with 2nd house amendments) Date: 04/05/2003

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	18-APR-03	

HOUSE BILL NO. 647

INTRODUCED BY B. THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING HEALTH CARE INFORMATION TO CONFORM TO FEDERAL HEALTH CARE PRIVACY LEGISLATION, INCLUDING THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996; IMPOSING A DUTY ON A PERSON AUTHORIZED TO ACT AS A HEALTH CARE REPRESENTATIVE FOR AN INDIVIDUAL WITH RESPECT TO THE INDIVIDUAL'S HEALTH CARE INFORMATION TO ACT IN GOOD FAITH TO REPRESENT THE BEST INTERESTS OF THE INDIVIDUAL; AMENDING SECTIONS 41-1-401, 41-1-402, 41-1-403, 50-5-106, 50-16-201, 50-16-205, 50-16-502, 50-16-504, 50-16-535, 50-16-1009, 50-19-402, 50-19-405, 50-19-406, AND 53-24-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-1-401, MCA, is amended to read:

"**41-1-401. ~~Health professional defined~~ Definitions.** As used in this part, the following definitions apply:

(1) "Emancipated minor" means an individual under 18 years of age who:

(a) is or has been married;

(b) is separated from the individual's parent, parents, or legal guardian and is self-supporting; or

(c) has been granted the right to consent to medical treatment pursuant to an order of limited emancipation granted by a court pursuant to 41-3-438.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) "Health professional" ~~as used in this part shall include~~ includes only those persons licensed in Montana as physicians, psychiatrists, psychologists, advanced practice registered nurses, or dentists."

Section 2. Section 41-1-402, MCA, is amended to read:

"**41-1-402. Validity of consent of minor for health services.** (1) This part does not limit the right of an emancipated minor to consent to the provision of medical treatment or to control access to protected health care information under applicable law.

~~(1)~~(2) The consent to the provision of medical or surgical care or services by a ~~hospital or public clinic~~

health care facility or to the performance of medical or surgical care or services by ~~a physician licensed to practice medicine in this state~~ health professional may be given by ~~a~~ an unemancipated minor who professes or is found to meet any of the following descriptions:

(a) a minor who ~~is or was ever~~ professes to be or to have been married or ~~has~~ to have had a child or graduated from high school ~~or is emancipated~~;

(b) a minor who ~~has been~~ professes to be or is found to be separated from the minor's parent, parents, or legal guardian for whatever reason and is providing self-support by whatever means;

(c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including a sexually transmitted disease, or drug and substance abuse, including alcohol. This self-consent applies only to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, a sexually transmitted disease, or drug and substance abuse also obliges the health professional, if the health professional accepts the responsibility for treatment, to counsel the minor or to refer the minor to another health professional for counseling.

(d) a minor who needs emergency care, including transfusions, without which the minor's health will be jeopardized. If emergency care is rendered, the parent, parents, or legal guardian must be informed as soon as practical except under the circumstances mentioned in this subsection ~~(1)~~ (2).

~~(2)~~(3) A minor who has had a child may give effective consent to health service for the child.

~~(3)~~(4) A minor may give consent for health care for the minor's spouse if the spouse is unable to give consent by reason of physical or mental incapacity."

Section 3. Section 41-1-403, MCA, is amended to read:

"**41-1-403. Release of information by ~~physician~~ health professional.** (1) ~~A treating physician or other~~ Except with regard to an emancipated minor, a health professional may~~, but shall not be obligated to,~~ inform the ~~spouse,~~ parent, custodian, or guardian of ~~any such~~ a minor in the circumstances ~~as~~ enumerated in 41-1-402 of any treatment given or needed when:

(a) in the judgment of the health professional, severe complications are present or anticipated;

(b) major surgery or prolonged hospitalization is needed;

(c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and health of the minor patient, younger siblings, or the public;

(d) ~~to inform~~ informing them would benefit the minor's physical and mental health and family harmony; or

(e) the ~~hospital~~ health professional or health care facility providing treatment desires a third-party commitment to pay for services rendered or to be rendered.

(2) Notification or disclosure to the ~~spouse,~~ parent, parents, or legal guardian by the health professional ~~shall~~ may not constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged communication, or any other legal basis of liability. ~~When~~ If the minor is found not to be pregnant or not afflicted with a sexually transmitted disease or not suffering from drug abuse or substance abuse, including alcohol, then ~~no~~ information with respect to any appointment, examination, test, or other health procedure ~~shall~~ may not be given to the parent, parents, or legal guardian, if they have not ~~been~~ already been informed as permitted in this part, without the consent of the minor."

Section 4. Section 50-5-106, MCA, is amended to read:

"50-5-106. Records and reports required of health care facilities -- confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report must be on forms and contain information specified by the department. Information received by the department through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information that would identify a patient must be dismissed from employment and subject to the provisions of 45-7-401 and 50-16-551, if applicable, unless the disclosure was authorized ~~in writing by the patient, the patient's guardian, or the patient's agent in accordance with Title 50, chapter 16, part 5~~ as permitted by law. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities must be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these applications, pursuant to part 3, must be accessible to the public."

Section 5. Section 50-16-201, MCA, is amended to read:

"50-16-201. Definitions. As used in this part, the following definitions apply:

(1) (a) "Data" means written reports, notes, or records or oral reports or proceedings created by or at the request of a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility that are used exclusively in connection with quality assessment or improvement activities, including the professional training, supervision, or discipline of a medical practitioner by

a health care facility.

(b) The term does not include:

(i) incident reports or occurrence reports; or

(ii) health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) (a) "Incident reports" or "occurrence reports" means a written business record of a health care facility, created in response to an untoward event, such as a patient injury, adverse outcome, or interventional error, in order to ensure a prompt evaluation of the event.

(b) The terms do not include any subsequent evaluation of the event in response to an incident report or occurrence report by a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee.

(4) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202(5) or licensed as a physician assistant-certified pursuant to 37-20-203."

Section 6. Section 50-16-205, MCA, is amended to read:

"**50-16-205. Data confidential -- inadmissible in judicial proceedings.** All data is confidential and is not discoverable or admissible in evidence in any judicial proceeding. ~~However, this section does not affect the discoverability or admissibility in evidence of health care information that is not data as defined in 50-16-201.~~"

Section 7. Section 50-16-502, MCA, is amended to read:

"**50-16-502. Legislative findings.** The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in ~~assuring~~ ensuring that health care information is not improperly disclosed and in having clear and certain rules

for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of ~~his~~ the patient's health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

(6) the enactment of federal health care privacy legislation and the adoption of rules pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., require health care providers subject to that legislation to provide significant privacy protection for health care information and the provisions of this part are no longer necessary for those health care providers; and

(7) because the provisions of HIPAA do not apply to some health care providers, it is important that these health care providers continue to adhere to this part."

Section 8. Section 50-16-504, MCA, is amended to read:

"50-16-504. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider, to determine compliance with:

(a) statutory, regulatory, fiscal, medical, or scientific standards;

(b) a private or public program of payments to a health care provider; or

(c) requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of critical, poor, fair, good, excellent, or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider, including medical or psychological diagnosis, treatment, evaluation, advice, or other services that affect the structure or

any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. ~~The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.~~

(8) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Peer review" means an evaluation of health care services by a committee of a state or local professional organization of health care providers or a committee of medical staff of a licensed health care facility. The committee must be:

(a) authorized by law to evaluate health care services; and

(b) governed by written bylaws approved by the governing board of the health care facility or an organization of health care providers.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(13) "Reasonable fee" means the charge, as provided for in 50-16-540, for duplicating, searching for, or handling recorded health care information."

NEW SECTION. **Section 9. Limit on applicability.** The provisions of this part apply only to a health care provider that is not subject to the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., and administrative rules adopted in connection with HIPAA.

Section 10. Section 50-16-535, MCA, is amended to read:

"50-16-535. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed ~~his~~ the patient's physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for ~~his~~ the patient's health care or unless authorized under subsection (1)(i);

(h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

(i) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

(j) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301 or a similar federal law.

(2) Nothing in this part authorizes the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding where disclosure is otherwise prohibited by law."

Section 11. Section 50-16-1009, MCA, is amended to read:

"50-16-1009. Confidentiality of records -- notification of contacts -- penalty for unlawful disclosure. (1) ~~Except as provided in subsection (2), a~~ A person may not disclose or be compelled to disclose

the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5, the Government Health Care Information Act, Title 50, chapter 16, part 6, or applicable federal law.

~~(2) A local board, local health officer, or the department may disclose the identity of the subject of an HIV-related test or the test results only to the extent allowed by the Government Health Care Information Act, Title 50, chapter 16, part 6, unless it is in possession of that information because a health care provider employed by it provided health care to the subject, in which case the Uniform Health Care Information Act governs the release of that information.~~

~~(3)~~(2) If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons who are potential contacts. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

~~(4)~~(3) A person who discloses or compels another to disclose confidential health care information in violation of this section is guilty of a misdemeanor punishable by a fine of $1,000 or imprisonment for 1 year, or both."

Section 12. Section 50-19-402, MCA, is amended to read:

"**50-19-402. Statement of policy -- access to information.** (1) The prevention of fetal, infant, and child deaths is both the policy of the state of Montana and a community responsibility. Many community professionals have expertise that can be used to promote the health, safety, and welfare of fetuses, infants, and children. The use of these professionals in reviewing fetal, infant, and child deaths can lead to a greater understanding of the causes of death and the methods of preventing deaths. It is the intent of the legislature to encourage local communities to establish voluntary multidisciplinary fetal, infant, and child mortality review teams to study the incidence and causes of fetal, infant, and child deaths.

(2) A health care provider may disclose information about a patient without the patient's authorization or without the authorization of the representative of a patient who is deceased upon request of a local fetal, infant, and child mortality review team. The review team may request and may receive information from a county attorney as provided in 44-5-303(4) and from a health care provider as ~~provided~~ permitted in ~~50-16-525 after~~

~~the review team has considered whether the disclosure of the information by the provider satisfies the criteria provided in 50-16-529(6)~~ Title 50, chapter 16, part 5, or applicable federal law. The review team shall maintain the confidentiality of the information received.

(3) The local fetal, infant, and child mortality review team may only:

(a) compile statistics of fetal, infant, and child mortality;

(b) analyze the preventable causes of fetal, infant, and child deaths, including child abuse and neglect; and

(c) recommend measures to prevent future fetal, infant, and child deaths."

Section 13. Section 50-19-405, MCA, is amended to read:

"**50-19-405. Unauthorized disclosure by review team member -- civil penalty.** A person aggrieved by the use of information obtained pursuant to 50-19-402(2) for a purpose not authorized by 50-19-402(3) or by a disclosure of that information in violation of 50-19-402(2) by a member of a local fetal, infant, and child mortality review team may bring a civil action in the district court of the county of the person's residence for damages, costs, and fees as provided in 50-16-553(6) through (8) or [section 23]."

Section 14. Section 50-19-406, MCA, is amended to read:

"**50-19-406. Unauthorized disclosure by review team member -- misdemeanor.** A member of a local fetal, infant, and child mortality review team who knowingly uses information obtained pursuant to 50-19-402(2) for a purpose not authorized by 50-19-402(3) or who discloses that information in violation of 50-19-402(2) is guilty of a misdemeanor and upon conviction is punishable as provided in ~~50-16-551~~ 46-18-212."

Section 15. Section 53-24-306, MCA, is amended to read:

"**53-24-306. Records of chemically dependent persons, intoxicated persons, and family members.** (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1), the department may make available in accordance with Title 50, chapter 16, part 5, or other applicable law information from patients' records for purposes of research into the causes and treatment of chemical dependency. Information under this subsection ~~shall~~ may not be published in a way that discloses patients' names or other identifying information."

NEW SECTION. **Section 16. Legislative findings.** The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) the enactment of federal health care privacy legislation and the adoption of rules pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., provide significant privacy protection for health care information with respect to health care providers subject to HIPAA;

(3) for health care providers subject to the health care information privacy protections of HIPAA, the applicability of the provisions of Title 50, chapter 16, part 5, relating to health care privacy is unnecessary and may result in significant practical difficulties;

(4) it is in the best interest of the citizens of Montana to have certain requirements, with respect to the use or release of health care information by health care providers, that are more restrictive than or additional to the health care privacy protections of HIPAA.

NEW SECTION. **Section 17. Applicability.** [Sections 16 through 24] apply only to health care providers subject to the health care information privacy protections of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., and administrative rules adopted in connection with HIPAA.

NEW SECTION. **Section 18. Definitions.** As used in [sections 16 through 24], unless the context indicates otherwise, the following definitions apply:

(1) "Health care" means care, services, or supplies provided by a health care provider that are related to the health of an individual. Health care includes but is not limited to the following:

(a) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to an individual's physical or mental condition; or

(b) the sale or dispensing of any drug, device, equipment, or other item in accordance with a prescription.

(2) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(3) "Health care information" means any information, whether oral or recorded in any form or medium, that:

(a) is created or received by a health care provider;

(b) relates to the past, present, or future physical or mental health or condition of an individual or to the past, present, or future payment for the provision of health care to the individual; and

(c) identifies or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(4) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(5) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(7) "Reasonable fee" means the charge, as provided for in [section 22], for duplicating, searching for, or handling recorded health care information.

NEW SECTION. **Section 19. Representative of deceased patient's estate.** A personal representative of a deceased patient's estate may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for the deceased person.

NEW SECTION. **Section 20. Disclosure of information for workers' compensation and occupational disease claims and law enforcement purposes.** (1) A signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider. The disclosure authorized by this section authorizes the health care provider to disclose or release only information relevant to the claimant's condition. Health care information relevant to the claimant's condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers' compensation must be consistent with the provisions of this section. Authorization under this section is effective only as long as the claimant is claiming benefits. This section may not be construed to restrict the scope of discovery or disclosure of health care information as allowed under the Montana Rules of Civil Procedure, by the workers' compensation court, or as otherwise provided by law.

(2) A health care provider may disclose health care information about an individual for law enforcement purposes if the disclosure is to:

(a) federal, state, or local law enforcement authorities to the extent required by law; or

(b) a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured by the possible criminal act of another.

NEW SECTION. **Section 21. When health care information available by compulsory process.** (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed the patient's physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for the patient's health care or unless authorized under subsection (1)(i);

(h) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

(i) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301 or similar federal law.

(2) [Sections 16 through 24] do not authorize the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding where disclosure is otherwise prohibited by law.

NEW SECTION. **Section 22. Reasonable fees.** Unless prohibited by federal law, a reasonable fee for providing copies of health care information may not exceed 50 cents for each page for a paper copy or photocopy. A reasonable fee may include an administrative fee that may not exceed $15 for searching and handling recorded health care information.

NEW SECTION. **Section 23. Civil remedies.** (1) A person aggrieved by a violation of [sections 16 through 24] may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with [sections 16 through 24] and may order any other appropriate relief.

(3) A disciplinary or punitive action may not be taken against a health care provider or the provider's employee or agent who brings evidence of a violation of [sections 16 through 24] to the attention of the patient or an appropriate authority.

(4) If the court determines that there is a violation of [sections 16 through 24], the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of $5,000, exclusive of any pecuniary loss.

(5) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(6) An action under [sections 16 through 24] is barred unless the action is commenced within 3 years after the cause of action accrues.

NEW SECTION. **Section 24. Good faith.** A person authorized to act as a health care representative for an individual with respect to the individual's health care information shall act in good faith to represent the best interests of the individual.

NEW SECTION. **Section 25. Codification instruction.** (1) [Section 9] is intended to be codified as an integral part of Title 50, chapter 16, part 5, and the provisions of Title 50, chapter 16, part 5, apply to [section 9].

(2) [Sections 16 through 24] are intended to be codified as an integral part of Title 50, chapter 16, and the provisions of Title 50, chapter 16, apply to [sections 16 through 24].

NEW SECTION. **Section 26. Effective date.** [This act] is effective on passage and approval.

- END -

degree and has to be supervised by a physician. An APRN has a Master's Degree and can practice independently.

CHAIRMAN THOMAS asked how many APRNs there are in Montana. **Sami Butler** replied that there are 489. She said that there are shortages, but the APRNs are distributed throughout the state.

Closing by Sponsor:

The sponsor closed.

{Tape: 3; Side: A; Approx. Time Counter: 10.5 - 15}

HEARING ON HB 647

Sponsor: **REP. BILL THOMAS, HD 93**

Opening Statement by Sponsor:

REP. THOMAS said this bill deals with one of the most complicated portions in Montana law, governing health care providers. The bill was put together by MHA and Montana Health Care Providers. This bill makes multiple changes in statute in the new technical requirements. HB 647 brings Montana into current federal standards and provides exemption from HIPAA. Section 16 through Section 26 is all new language.

{Tape: 3; Side: A; Approx. Time Counter: 15 - 23.5}

Proponents' Testimony:

Bob Olson, MHA, explained the bill and the changes in medical records. He explained that the bill is an attempt to simplify matters and remove all doubt of when to follow state law and when to follow federal law.

Katherine Donnelly, MHA, Attorney, helped write this bill. She explained that the deadline to implement HIPAA is April 2003. HIPAA standardizes the process of electronic transfers, so Montana will be able to work with other states. Page 5, Lines 14-19 is mostly housekeeping. This bill provides protection for those not covered by federal law.

Bob Olson addressed the new sections, 16-26, in Exhibit 9.

EXHIBIT(huh37a09)

{Tape: 3; Side: A; Approx. Time Counter: 23.5 - 27.6}

Pat Melby, Montana Medical Association, Attorney, also explained the need for this bill and its relationship to the Uniform Health Care Information Act. If all states had followed that Act, there wouldn't be a need for HIPAA standards. He said this bill helps health care providers know which law they need to follow (state or federal).

Mary McCue, Montana Dental Association, pointed out that most dentists are not filing electronically. This bill would help and encourage them to file electronically.

Jeanne Cannon, Montana Health Information Management Association (MHIMA), supports HB 647 and stated that MHIMA is in agreement with this bill.

Al Smith, Montana Trial Lawyers Association (MTLA), also supports the bill and especially Section 20. MTLA has a concern with Page 4, Section 6, Lines 22-24, but they will wait to work with the Senate.

Opponents' Testimony: None.

{Tape: 3; Side: A; Approx. Time Counter: 27.6 - 30.1}

Questions from Committee Members and Responses:

REP. FACEY asked why the committee should wait until this bill goes to the Senate to apply the amendments. **Bob Olson** replied that not all of the issues have been raised and resolved yet.

{Tape: 3; Side: B; Approx. Time Counter: 0.1 - 9}

REP. NOENNIG asked Katherine Donnelly for further explanation of how state and federal laws apply and how this bill changes those regulations. **Ms. Donnelly** referred to Section 7, Page 4, Line 26 and explained those changes with the bill (Exhibit 9). REP. NOENNIG and Ms. Donnelly continued discussing the bill at length.

{Tape: 3; Side: B; Approx. Time Counter: 9 - 15.3}

Closing by Sponsor:

The sponsor closed.

EXECUTIVE ACTION ON HB 647

{Tape: 3; Side: B; Approx. Time Counter: 16.2 - 17}

Motion: **REP. THOMAS moved that HB 647 DO PASS.**

Discussion:

REPS. ROBERTS and FACEY stated their support for HB 647.

Vote: **Motion carried unanimously.**

EXECUTIVE ACTION ON HB 585

{Tape: 3; Side: B; Approx. Time Counter: 17 - 30}

Motion: **REP. FACEY moved that HB 585 DO PASS.**

Discussion:

REP. ROBERTS stated his support for HB 585.

REP. NOENNIG said that he has serious reservations about this bill, and the determination of someone other than a physician, that a person is terminally ill.

REP. STOKER explained that he is seeing more nonphysicians attaining more medical authority, and this bill also worries him.

REP. ROBERTS explained his view of the need for this bill.

REP. NOENNIG also added his interpretation of the bill.

{Tape: 4; Side: A; Approx. Time Counter: 0.1 - 10}

REP. FACEY also made a comment (not on the tape).

REP. RASER stated that APRNs will only take on what they can do in the scope of their rules governed by their Board of Nursing. She said that these APRNs are currently attending the terminally ill, and are already their primary care giver.

REP. GALLUS said that this bill grants greater responsibility, not greater liability. He stated that if there was a great question on this, more doctors would have been here to oppose.

REP. HURWITZ shared the story of his father's experience.

EXHIBIT 9
DATE 2-19-03
HB 647

Section Analysis of HB 647 – Modifications to the Uniform Health Information Act

Overview of the Bill

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) made major changes in the federal statutes governing privacy of medical information and the electronic transmission of health care transactions.

These changes are sweeping and pre-empt most – but not all – of Montana's existing state privacy statutes, which are found in the Uniform Health Care Information Act. HB 647 would bring Montana's statutes into conformity with the new federal standards.

Simply stated, HB 647 specifies that health care providers who must comply with the HIPAA standards are not required to follow state laws. HB 647also specifies that health care providers who are not required to comply with HIPAA are required to continue to comply with state privacy laws.

Who is subject to HIPAA?

Most health care providers, payers and other organizations that have access to private health information are subject to the new federal rules. This list includes, but is not limited to, hospitals, physicians, insurance companies, claims processing companies, other health professionals and other companies that engage in certain business activities with those health care companies.

Who is exempt form HIPAA?

Federal law provides an exemption for certain small health care organizations. Those organizations are exempt if:

1) The organization employs fewer than 25 persons; and
2) The organization does not perform any of the standardized electronic health care transactions (including electronic claims processing, eligibility verification, electronic explanation of benefits). Examples of health care providers who are exempt from HIPAA might include rural physicians, dentists or other small group practice health professionals who conduct business with paper forms and procedures.

Section 1: Current law, 41-1-401 – Amendment to current law pertaining to consent to treatment by emancipated minors.

Changes:

- Amend the definition of "emancipated minor" for clarification,
- Define a health care facility by cross-referencing it to current license statute, and
- Add the term "advanced practice registered nurse" to the definition of health professional.

Why the Changes? The current statute is outdated, sometimes confusing, and excludes APRNs from the definition of health professional. This amendment does not depend upon the provisions of HIPAA. The changes are merely housekeeping.

Section 2: Current law, 41-1-402
Changes:

- Clarifies that the consent provisions that apply to minors do not impair the right of an emancipated minor to consent to treatment or to access their personal health information.

Why the Changes? Current statute is somewhat confusing. Minors may consent to treatment under limited circumstances. Emancipated minors are exempt from those limitations (since they are no longer considered to be minors). The change clarifies that fact.

Section 3: Current law, 41-1-403
Changes:

- Carries the clarification about emancipated minors' exemption from the statutes that limit the circumstances under which a professional or health facility may release private health information.

Why the Changes? Current statute is somewhat confusing, some parts outdated. The changes seek to clarify and update the statute.

Section 4: Current law, 50-5-101
Changes:

- This section of law provides authority for the Department to collect certain utilization and operating data from health care providers. The Department is charged not to collect or disclose personal health information without the person's consent. The change updates the reference in law since some portions of State law would no longer exist.

Why the Changes? Since some parts of the code will be repealed or modified the language seeks to maintain personal privacy restrictions.

Section 5: Current law, 50-16-201
Changes:

- This section of law provides protection from discovery and admission into court proceedings of peer review and quality assurance committees.
- The statute is amended to extend that protection to the peer review and quality assurance and improvement activities as well as the Committees direct work.
- The section is also amended to clarify that a person's own private health information is not part of the peer review protections. That is, patients remain able to access their own health information.

Why the Changes? Health care providers and professionals are required to conduct health quality and improvement activities. The current law is too restrictive since the protection from discovery is only conferred on the peer review committee. This change extends that protection to the activity, but does not put any currently accessible information out of reach of the patient.

Section 6: Current law, 50-16-205
Change:

- Delete a duplicative sentence. Housekeeping.

Why the Change? Housekeeping is proposed since this part of the statute is open.

Section 7: Current law, 50-16-502
Changes:

- This section of the law is the beginning of the Montana Uniform Health Information Act.
- The legislative findings are amended by adding paragraphs six and seven to the statute.
- Paragraph six specifies that since federal law preempts certain provisions of state law, the state law no longer applies to those health care providers.
- Paragraph seven specifies that those health care providers who are not affected by the changes in federal law must continue to adhere to state law.

Why the Changes? Language clarifies the intent that health care providers adhere to the applicable standard.

Section 8: Current law, 50-16-504
Change:

- This section of law provides the definitions for the Montana Uniform Health Information Act.
- The definition of health care provider is amended to include pharmacies. This is accomplished by the repeal of the sentence in current law that excludes them.

Why the Change? Pharmacies are subject to the Federal privacy standards. This change updates current law.

Section 9: New Section
Change:

- The new language specifies that a health care provider that is not subject to the federal privacy statutes is required to adhere to the state standards.

Why the Change? Some providers must comply with federal standards, some with state standards. This statute directs the provider to the appropriate privacy laws.

Section 10: Current law, 50-16-535
Change:

- This section of law addresses compulsory processes, those in which health records are released as a result of a legal process (court order, subpoena).
- The change cleans up current language and references federal law.

Why the Change? These changes amount to housekeeping, except for the reference to federal law. Health information is subject to subpoena by federal law.

Section 11: Current law, 50-16-1009
Change:

- This section of statute addresses those circumstances when a provider is required to report communicable diseases to the state.
- The change repeals paragraph two, and restates the restrictions in paragraph one. The change is considered to be housekeeping.

Why the Change? Housekeeping. Requested by DPHHS.

Section 12: Current law, 50-19-402
Change:

- This section of law allows release of certain patient information to a local fetal, infant and child mortality review team.
- This law was put in place to allow review teams to investigate and review sudden fetal, infant and children's deaths.
- The change in the law updates the conditions under which a health care provider may release information to include the new federal privacy standards.

Why the Change? This section must be updated to include a reference to federal privacy standards.

Section 13: Current law, 50-19-405
Change:

- Current law restricts local fetal, infant and child mortality review team members from releasing private health information and provides for a civil penalty.
- The amendment adds a reference to civil remedies (section 23) that continue to apply to health care providers who must comply with federal privacy standards.

Why the Change: The new sections of law included in this bill (sections 16 -24) retain state protections in addition to the federal privacy standards. The reference to the new sections is required.

Section 14: Current law, 50-19-406
Change:

- This section of law provides that improper release of information by a local team is a misdemeanor.
- The cross-reference in the statute is updated.

Why the Change: Housekeeping. Pointing the remedy provision to the appropriate section of law.

Section 15: Current law, 53-24-306
Change:

- This section of law addresses privacy rights for persons who receive treatment for chemical dependency treatment.
- Current law provides a limited right for the Department of Public Health and Human Services to release health information for research purposes.
- Federal privacy laws provide additional limits on release of health information for health research.
- The Montana code is updated to reference federal privacy laws.

Why the Change? Federal privacy laws affect this provision of State law. Housekeeping.

Sections 16 through 24 provide the main portion of the new sections to the bill. Federal privacy rules govern private health information except in those cases that state law preempts the federal provisions. These new sections specify those exceptions to the federal privacy rules. Stated another way, they specify which sections of state statute will be preserved for entities who are subject to HIPAA.

Section 16: New Section: Legislative Findings
Change:

- This section specifies that federal privacy rules will preempt state law in most cases, but for those health care providers subject to federal standards, certain state standards will remain in effect.

Why the Change? State law can preempt federal privacy rules in limited circumstances. Namely, state requirements preempt federal rules where state requirements create a greater privacy protection (or where State practices reflect local, rather than national concerns).

Section 17: New Section: Applicability
This section specifies that the new statutes apply only to those health care providers who must comply with federal privacy rules. (Providers who are not required to comply with federal rules are required to comply with similar existing State requirements.)

Section 18: New Section: Definitions
This section provides definitions for common terms included in the following new sections of State law.

Section 19: New Section: Representative of deceased patient's estate.
This section continues the existing State policy to allow certain representatives and surviving family members to access private health information.

Section 20: New Section: Workers' Compensation
This section maintains the existing State requirements pertaining to Workers' Compensation cases. State policy is unique to Montana, and not of concern to federal privacy rules.

Section 21: New Section: Health Information and Compulsory Processes.
Montana legal processes (commitment, law enforcement, subpoena) are well understood, are unique to Montana and consistent for all health care providers. These provisions continue existing Montana statutory requirements.

Section 22: Reasonable Fees.
Montana statute governs the amount that a health care provider may charge for duplication and production of health care information. Federal privacy rules limit the circumstances under which a fee may be charged. In circumstances where federal rules don't apply, current State standards remain in place.

Section 23: New Section: Civil Remedies
Civil remedies contained in existing State statutes remain intact.

Section 24: New Section: Good Faith
Retains the current requirement that a legal representative of a person act in that person's best interest. (current law)

Section 25: New Section: Codification instructions.

Section 26: New Section: Effective Date
This bill is effective on passage and approval.

HOUSE OF REPRESENTATIVES
Roll Call
HUMAN SERVICES COMMITTEE

DATE 2-19-03

NAME	PRESENT	ABSENT	EXCUSED
REP. BILL THOMAS, CHAIRMAN	✓		
REP. MARK NOENNIG, VICE CHAIR MAJORITY	✓		
REP. ARLENE BECKER, VICE CHAIR MINORITY	✓		
REP. TOM FACEY	✓		
REP. STEVE GALLUS	✓		
REP. RAY HAWK	✓		
REP. DAN HURWITZ	✓		
REP. LARRY JENT	✓		
REP. PENNY MORGAN	✓		
REP. HOLLY RASER	✓		
REP. DON ROBERTS	✓		
REP. RON STOKER	✓		
REP. JONATHAN WINDY BOY	✓		

HOUSE STANDING COMMITTEE REPORT

February 20, 2003

Mr. Speaker:

We, your committee on **Human Services** recommend that **House Bill 647** (first reading copy -- white) **do pass.**

Signed: Bill Thomas, Chair
Representative Bill Thomas, Chair

- END -

Committee Vote:
Yes 13, No 0.

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2/20 10:15
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Montana House of Representatives
Visitors Register

HUMAN SERVICES COMMITTEE Date 2-19-03

Bill No. HB 647 **Sponsor(s)** Rep Thomas

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Jeanne Gannon	MHIMA	✓		✓
Joanne Ramasko	MHIMA	✓		✓
Pat Melby	MT Med. Assn	✓		
Sam Butler	MNA	✓		
Mary McCue	MT Dental Ass'n	✓		
Bob Olsen	MHA	✓		
AL Smith	MCHA	✓		
Katharine Donnelly	MHA			✓

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN JERRY O'NEIL**, on March 12, 2003 at 3:10 P.M., in Room 350 Capitol.

ROLL CALL

Members Present:

Sen. Jerry O'Neil, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Brent R. Cromley (D)
Sen. Bob DePratu (R)
Sen. John Esp (R)
Sen. Dan Harrington (D)
Sen. Trudi Schmidt (D)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Andrea Gustafson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 493, 3/5/2003; HJ 19, 2/27/2003; HB 647, 2/27/2003
Executive Action: HB 180; HJ 19; HB 493

to get them off the dime, then that was what should be done because it was important.

SEN. ESP wanted an idea what the cost would be. He said if this was about computer systems and it was about trying to change the way they did paper work, he thought that including in the resolution to consult with the IT people in the Department of Administration and coordinate would be important that expertise into it too.

SEN. HARRINGTON said that if the department felt that coming to us was important enough, then he thought it important to give them the OK and do it.

SEN. BOHLINGER said the outcome of the study might produce some benefits in that a great source of federal assistance might be found in funding programs and he encouraged the committee to move it out.

SEN. O'NEIL asked **SEN. ESP** if he would feel better about the bill if it had an amendment requiring them to consult with us.

SEN. ESP said he would vote against the bill anyway.

Motion/Vote: SEN. GRIMES moved that HJ 19 BE CONCURRED IN. Motion carried 6-2 with ESP and O'NEIL voting no. SEN. DEPRATU voted by PROXY.

HEARING ON HB 647

Sponsor: REP. BILL THOMAS, HD 93, Hobson

Proponents: Bob Olson, Mental Health Association
Pat Melby, MT Medical Association
Jeanne Cannon, MT Health Information Act Association
Kathy Kenyon, General Counsel, Deaconess Billings Clinic
Julie Mariani, MT Health Information Act Association
Al Smith, MT Trial Lawyers Association
Jacqueline Lenmark, American Insurance Association

Opponents: None.

Opening Statement by Sponsor:

REP. BILL THOMAS, HD 93, Hobson, read and submitted written testimony that touched on the highlights of the bill.
EXHIBIT(phs52a02)

Proponents' Testimony:

Bob Olson, Mental Health Association
said his organization brought HB 647 forward and the reason for that was the Federal Statute imposed in 1996 and became activated in April of this year as it pertained to privacy standards and there were electronic transactions standards that took effect this October. Since 1996 until this year, we had been working on federal regulations and adjusting our own operations at hospitals and other medical institutions, insurance companies and others to compart with these federal laws. The federal laws were born out of the Health Reform discussion from the mid 1990's and one of the ways the Federal government believed they could reign in health care costs was to put the health care administration up to technology. That was electronic transaction. Imagine trying to get everybody on one sheet of paper for electronic transactions and the first thing that came to mind was making sure everybody had the same privacy standards, which was why the federal government wrote extensive statutes, to guarantee a consistent nationwide privacy standard for all Americans. The way that came back to Montana was Montana had always followed the Uniform Health Care Information Act, which was not much different from the federal statute except a few things that were a little different. The federal government decided to leave things to the state's own design and we did not change Montana law. There were areas dealing with youth for example, or dealing with trust estates and representatives. Not every health care provider was subject to the federal standards and the approach in the bill was to state those organizations that were subject to federal law follow federal law with a few exceptions, and those exceptions were at the last half of the bill, Sections 16-24. This was where an individual or small organization was not required to follow law, but continue to follow existing Montana law. He pointed out the areas, section by section, maintenance types of amendments and the areas related to Health Insurance Portability and Accountability Act, HIPAA. He said they had a series of amendments to the bill. When they brought it forward in the House, they had widely distributed the bill to many other parties interested in HIPAA and invited them to come in with their concerns and comments. Over the last several weeks they had been working on amendments addressing their concerns and he believed they had nearly all the amendments that people needed to see in order to make the bill workable for all organizations. The first section dealt with emancipation of minors, when a health care provider dealt with a minor who sought medical care. In some circumstances the minor could be an emancipated minor and consent to health care provider on their own. The first three sections of the bill made modifications and it was their attempt to clarify the conditions on which a health care could rely on that assertion of emancipation. Mr. Olson said those were

housekeeping amendments intended to clarify the issue of emancipation. Section 4 was also a housekeeping amendment and through Section 5 and 6 as well. Section 6 had an amendment and

{Tape: 1; Side: B}

Section 7 concerned legislative findings. On Page 5 of the bill, Numbers 6 and 7 were the pertinent parts. It talked about the enactment of the standards that would require health care providers be subject to federal legislation. Because the provisions did not apply to everybody, it was important that those that were exempt from federal law continued to follow the state part. Sections 8-14 was cleanup. Section 11, Page 8, there was an amendment that reworded the information requested by the State of Montana agencies to amend it to the Government Health Information Act which was their ruling statute. The new section 16 was important because it discussed HIPAA and that was a new set of legislative findings that basically stated that we were now going to be following federal law. In most aspects that would delineate the remaining parts of Montana policy or Statute. It gave Montana's health care providers a consistent way to deal with local law enforcement and the local judicial system. Section 19 was the first section where instead of following federal law, we continued to follow Montana's statute when it dealt with deceased patients' estates. Section 20 was Workers Compensation. Mr. Olson said they had an arrangement already in place for workers comp. insurers and employers on how to transfer health information when there was an injured worker, so they left that section of the law in the books. New Section 21 dealt with the compulsory processes. That basically dealt with the courts judicial processes when dealing with administrative proceedings, etc. Those were inherently unique to Montana and we would continue to follow those and all health care providers would follow it as well. This section was a repeat of statute in the Public Health Care Information Act. That particular act was repeated for this purpose. He said they wanted to make sure all health care providers followed the same standard in dealing with the Judges in the courts with an administrative law rather than have some following one method and another set following another. They retained the limitation charge of $.50 a page plus $15.00 and then the new Section 23 were civil remedies that were also current health law. He said those were the amendments they worked out and believed the amendments were already distributed to the committee. **EXHIBIT(phs52a03)** Mr. Olson pointed out a few amendments because they were substantial additions to the bill. There was clean up in the title because they dropped amendments in Section 6. The second amendment added physician assistants, professional counselors, and social workers to the bill and under the title of Health practitioners, the term "medical treatment" was dropped and the term "health services," was inserted in three

places on Page 1 and 2 of the bill. New Section 21 was going to be inserted on page 13, which was an amendment dealing with the method of compulsion process. This again was a current state statute upon how health care providers released records when there was a lawsuit or a legal issue raised by an individual's retained counsel.

Pat Melby, MT Medical Association, supported HB 647 and the amendments proposed. Last summer he had the chore of preparing what was called the preemption analysis comparison of the privacy standards with the Montana Uniform Health Care Information Act. One was done independently for the Montana Hospital Association and both came up with a comparison of those two requirements for managing, using, and disclosing health care information of patients of health care providers. **Mr. Melby** said theirs was very complicated. There were times when telling which requirement was more stringent was difficult or which one would take precedence over the other. He had a psychologist call and ask for help. The psychologist had to meet HIPAA privacy standards and he could not tell whether he should comply with HIPAA or the Uniform Health Care Information Act. He said this bill would make it much easier for health care providers who were going to be covered by different privacy standards and they would not have to try to balance and compare HIPAA privacy standards with Uniform Health Care Information Act standards in determining with which one they should comply.

Jeanne Cannon, MT Health Information Act Association, said they supported this bill and urged the committee for support as well.

Kathy Kenyon, General Counsel, Deaconess Billings Clinic, said Deaconess Billings Clinic supported the bill and the amendments. She said she was responsible for HIPAA in her organization. Federal law provided enormous protection for privacy of information. Anybody who came to Deaconess Billings Clinic as of April 2 would be getting a document that in its current form was eight 1/2 pages long. All privacy practices of Deaconess Billings Clinic were described in a very thorough way. Every hospital and physician would be providing similar documents to their patients unless they were exempt from the law. She said that the federal law here was a very comprehensive thorough law that would substantially in many areas conclude the protections that patients had for the privacy of their health care information and they supported the bill.

Julie Mariani, MT Health Information Act Association, Director of Business Operations, said they supported the bill and the amendments stated.

Al Smith, MT Trial Lawyers Association,
said they supported this, especially the amendments. They were concerned with Page 4, Lines 22-24. One reading of that could have been "would not have access to any health care information for one of the malpractice claims." The amendment returned it to traditional language data that was confidential under the statute, staying that way to review protection. It stayed that way but could access the other information. They were also supportive of the sections regarding workers compensation which started at the bottom of Page 11. At the top of Page 12 was an agreement that they worked out with the insurers, work comp., state fund, unions, and trial lawyers over several years.

Jacqueline Lenmark, American Insurance Association, spoke for **George Wood** who was the Executive Director of the Association and said they stood generally in support of the bill. The sponsor introduced the bill indicating that the theme here was coordination and she was glad he chose that theme. Her testimony was directed to a narrow piece of the bill as it related to workers' compensation insurance because another bill was moving through the legislature and if both bills passed unamended, a conflict would be created. She pointed out duplications in the two bills and the potential conflict. She believed the interested parties agreed among themselves about how to solve that problem with the technical input of legislative services and Montana bill drafting requirements. Workers' compensation was to be regulated only under state law and currently we have instate law, the provision heard by **MR. SMITH** and **MR. OLSEN** regarding Workers Compensation insurance. SB 450 also contained amendments in it directed to those provisions of the law. In HB 647, there was no amendment to the current statute in Title 50-16-527 and there was a new Section 20 in HB 647 that was to address Workers Compensation Insurance. In SB 450 were two sections. The amendments to 39-71-604, which was Section 1 of that bill and amendments to 50-16-527, which was Section 5 of that bill. She believed that all of the parties agreed that as those sections read in SB 450, those were appropriate amendments to this portion of the law. The question was whether they should be duplicated in both titles and in both bills. The suggested fix she proposed was for Section 20 of HB 647 be stricken because as to noncovered entities, they would be treated under SB 450 in Section 1 and then Section 5 had in SB 450 dealing with the non-covered entities. An alternative would be to leave SB 450 unamended and delete Section 20 from HB 647. A different alternative would be to strike Section 5 from SB 450 also so that assuming both bills passed, only one Section addressing Workers Compensation Insurance would exist in law and it would be in the Workers Compensation Act where it was state law governing that line of insurance. She asked for the appropriate way to do that. She

said there was no absolute guarantee that both bills would pass and it was very important that the section be preserved.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SENATOR ESP asked for an explanation of the differences between the facilities that would fall under one set of rules and facilities that would fall under the other set of rules. **Mr. OLSON** said that every health care provider was subject to Federal law. Every health insurance company, every medical provider and all other medical companies that dealt with medical providers had a stake in what the Federal law said. Then, the Federal Government realized that what they were trying to do was to standardize privacy when organizations were engaged in electronic transactions. Those electronic transactions were when claims were sent in or if someone inquired about eligibility and that was done electronically. That information was out on the wires so they created a carve out in the Federal law and they said that they would exempt small organizations and that was commonly referred to as the "County Crock Exception." It was going to affect Montana's dentists most directly because if someone were not doing electronic transactions and he or she had fewer than 25 employees, there were many small clinics, physicians, dentists, and therapists, people who did not have to follow those federal laws. What that meant to them was that they did not have to develop a very extensive privacy protection and security protection that were normally required when thought in terms of electronic transactions. That was how who was in or out was differentiated.

SENATOR ESP asked how many facilities were considered in. **MR. OLSON** said he would venture to say that every hospital, every nursing home, and every home health agency facility of that type were all going to be subject. The exemption was most likely to be in small groups or individual solo practices: dentists, physical therapy, and occupational speech therapists that were in small practices that would generally be exempt from impact.

SEN. GRIMES asked about the psychologist who called **Mr. Melby** wanting to know which program to comply with, which one did he fall under and why. **MR. MELBY** said because it was a small office he was a sole practitioner and he was not sure the man had any staff. The man submitted claims electronically so he fell under HIPAA.

SEN. GRIMES was trying to understand the Page 4, Section 6 regarding admissibility. He had looked up the definition of data and found it exhaustive. Written reports noted virtually everything was then discoverable with the reinsertion of the language proposed to be stricken. **SEN. GRIMES** asked what the rationale was behind the original purpose of amending the language in that way. Was it to make all that information unavailable through discovery and admissibility. **MR. OLSON** said no. They were not trying to change the ground rules for discovery. They had worked hard last session on this section of statute and came to an understanding. What they thought they were doing was making a clarifying amendment on when that particular section of statute would or would not be subject to discovery and admissibility. They thought they were clarifying it but since the trial they were a little uneasy about making any changes to that statute and decided to leave it alone. It really did not need house keeping and it had nothing to do with HIPAA, so they just agreed yes, they were not helping themselves by confusing the issue.

SEN. GRIMES asked if the new sections in the last half of the bill were from current Health Information Act and was it in Montana code anywhere.

{Tape: 1; Side: B}

MR. OLSON said information in Montana law, the Uniform Health Care Information Act, was the current Montana Statute. There were bits and pieces of that act and they had reused it in this bill. They were making little change to current Montana Statute. Nevertheless, it was the statute referring to what they were saying. The Montana law, Uniform Health Care Information Act, and the Federal privacy standards were what most facilities would have to follow, so they left those alone. There were now parts of those State laws that were unique to Montana process. He said they did not have a national application and that every state had its own way of dealing with the local judicial and law enforcement agencies. Every state had its own way of dealing with the State and trust, etc. No national laws governed that, so they reproduced those sections specifically so that a health care facility that was subject to federal standards would fall under all the federal standards but when it came to those five or six items that were similar. **Mr. Olson** said it would duplicate what everybody else in the state was doing and the Judge would have only one way to do business with health care issues.

SEN. GRIMES asked if it were duplicative, was that why we did not have any repealers or was this an existing law being amended or was language being pulled out of other codes. **MR. OLSON** said the

option for them would have been to get in it and say all facilities would follow federal law except Section 50-16-527 and just reference them. Since there was at least a bet that eventually the Federal Government might like an ink stain on the issue, would require everybody to comply eventually to the same standard. He said they just wrote them that way so that they were already there.

SEN. GRIMES asked if **Mr. Olson** would explain the Civil Remedy Section, new Section 23. Was that existing law as well. **MR. OLSON** asked if he could refer that to **Kathy Kenyon** for explanation.

Ms. Kenyon said existing law did have a civil penalty in the Uniform Health Care Information Act of the Montana law. That particular provision would create a State Civil Penalty for those sections of law that were Montana specific sections. An example would be the sections in the bill that would still apply to those of who were going to be under HIPAA, under federal law, and were also going to have to follow Montana Law. She said if we violated the section of Montana law, that would be the limit.

SEN. GRIMES asked what remedies **Ms. Kenyon** would have under HIPAA. **Ms. Kenyon** said the remedies under HIPAA were administrative-process. If there was a violation of the law that was an honest mistake, a civil type thing, then we paid a penalty. There were also criminal penalties in the federal law that required very large mandatory payments for organizations and would put many individuals in jail.

SEN. GRIMES said he heard the amendments were friendly but an option was given on Page 12, Section 20 on the coordination with Workers Cost. Did MHA have a preference on how that was handled. **MR. OLSON** said they did not have a preference on where it appears. Those in the Workers Comp. world would prefer to have it in Workers Comp. Statutes so a person could keep an eye on it, and those who were in the Health Care Information World, might be more comfortable having it there but the standard was the standard. It was one that balanced many interested parties. Its location was not of consequence to them, since it said the same thing, and they all maintained their agreements on how to do business, and how to conduct business among the Workers Comp., providers, insurers and lawyers.

SEN. ESP asked about Page 8, in Section 11, where Subsection 2 was being stricken. He asked if that was because the amendment was being inserted in Subsection 1 and did it cover everything that needed to be covered. **MR. OLSON** said that was exactly right. Subsection 2 was amended, stricken, and replaced by the

sentence of Section 1 at the request of the Department of Public Health.

SEN. O'NEIL asked about the bill going through the legislature for a study on people killed by spousal abuse. Would the investigating body be able to look at hospital records of those people and would the bill leave that possible. **MR. SMITH** said it had been a long time since he looked at that. **Mr. Smith** said if he were talking about the study committee through the Attorney General's office, he thought it would be fine. He did not think there was anything to be changed there that would prohibit what was being asked for in the bill, but it had been a long time since he had read that one. **Mr. Smith** said there was a section in Federal Statute that provided access to health care records, personal health information for state agencies for their contractors and their agents, when they were authorized to engage in those types of conducts by law. The kinds of entities that would have access to the records would be the Department of Public Health as a Medicaid contractor, the Attorney General for the State of Montana, the Board of Medical Examiners, and the Board of Visitors. He believed the Ombudsmen's offices could probably continue the conduct of their business under the federal standard which guaranteed their access to that information.

SEN. O'NEIL asked about surviving immediate members of family, such as the spouse, adult child, or any other person who was authorized by law to act for the deceased person, were they authorized by law to actually receive information about the deceased person. **MR. OLSON** said the short answer was that it was true under current Montana law if someone were deceased and he had surviving kin, they could come in and access his personal health information. They can do that, but it was limited to accessing the health information such as receiving copies of medical records and dealing with his health care as a matter of an agency relationship. An example would be paying the last of his bills, making sure the services were delivered and the like, but that was true under current Montana law so this was current standard.

Mr. Melby said the question **SEN. O'NEIL** asked was about Section 20 where they talked about the workers comp. section, if a determination were made to remove the workers' comp. language. **Mr. Melby** wanted to see Subsection 2 of that part remain. Right now under the HIPAA privacy standards an entity may show health care information to law enforcement who was investigating, but nothing more. Currently under Montana law, the law enforcement would at least be able to get an investigative subpoena and if Subsection 2 were left in, it would retain that protection to get an individual's health care information. For a hospital, if

Subsection 2 were deleted, and Subsection 1, then it was going to be left wide open.

SEN. GRIMES said Page 12, line 16 felt a little loose regarding disclosure of health care information. Would that include only patients' injuries occurred by another and not by themselves for some reason and would that be cleared up in the other bill under the standard Worker's Comp. law. **MR. OLSON** did not know the answer to that question.

Ms. Lenmark said her understanding was that the Health care providers and the people who were primarily interested in the bill wanted to delete Subsection 2 from Section 20. We have no objection to **Mr. Melby's** suggestion that the languages in Subsection 2 remain and not duplicated in SB 450.

SEN. GRIMES asked **MR. MELBY** if he cared to respond. **Mr. Melby** said Subsection 2(b) allowed a health care facility or health care provider to provide health care information to a law enforcement officer who was investigating a patient being treated at that health care facility if the patient was injured by a possible criminal act. However, if they were investigating a crime, the health care facility can reveal health care information regarding that prime act.

SEN. GRIMES asked if the language were taken from somewhere else or was it new. **Mr. Melby** said it came out of the current Uniform Health Care Information Act, from 50-16-530.

SEN. GRIMES asked about the civil remedies section on Page 13 regarding pecuniary losses. Was it the same as actual physical loss and physical cost. Was the $5,000 on Line 29 punitive. **MR. OLSON** said the remedy was the $5,000 that could be recovered for punitive plus the actual damages.

SENATOR ESP asked if it were meant to read "disclosure of information for law enforcement purposes" for the title of that section. **Mr. Melby** said yes. Right now it read "disclosure for Workers Compensation and Occupational disease claims and law enforcement purposes." He said to delete out "for workers compensation and occupational disease claims" and then delete Subsection 1 and leave the rest.

Mr. Smith said they would not agree to leave Section 20 out and they did not agree with SB 450 as it violated, in their opinion, privacy rights of indigent workers. This was the current law that was in Section 20. SB 450 sought to amend it, to allow insurance adjusters to contact the physicians without giving notice to the patient, or to the patient's attorney, and they

felt that it went too far. **Mr. Smith** said they preferred it stayed in. He said they could do coordination if SB 450 passed in its present form. It had not been heard in the House yet to look at that, and he urged for Section 20 to be left in.

SENATOR GRIMES asked when SB 450 would be heard in the House. **Mr. Smith** did not know if it had been scheduled yet.

Closing by Sponsor:

REP. THOMAS said he retired from his dental practice in 1994. He kept his membership in the Montana Dental Association and continued to receive their journals. Several years later he received a journal and could not understand the cover or what was inside it. It brought to his mind all the changes in the health care environment and what was happening today. He said we were working with the 1996 Act and wondered what it was going to be in 2046 and then in 2096, that it evolved almost daily. **REP. THOMAS** asked **Mr. Melby** what was going to be done with the information. **Mr. Melby** said the Montana Medical Association would put in its bulletin and advise all of its members that these changes had been made and lay out the ground rules for who should be under the HIPAA privacy standards and who should be under the Uniform Health Care Information Act. He believed over time, between 5-10 years, all providers, or at least those who dealt with Medicare and Medicaid and probably some larger insurance companies like Blue Cross Blue Shield would ultimately fall under the HIPAA privacy standards because those entities were going to require claims to be submitted electronically. **REP. THOMAS** said he anticipated that this would probably be as some a type of book that would go to the practitioners. This would be something they could just flip through when they did not understand what they had to do. This was essential. Practitioners had enough on their mind keeping up with their professions without worrying about either Uncle Sam or whoever. He said we needed this.

{Tape: 2; Side: B}

EXECUTIVE ACTION ON HB 493

Motion: SEN. ESP moved HB 493.

Discussion:

SEN. ESP asked **SEN. CROMLEY** what the bill said in laymen's terms. Did it say that a health care facility could not be a professional employer arrangement or a professional employer group. **SEN. CROMLEY** said it did not say that. What he thought it

HB 647
Talking Points for Rep. Bill Thomas

- HB 647 deals with one of the most complicated portions of Montana's laws governing health care providers – the statutes affecting the privacy of medical information. As a retired provider, I know just how complicated these statutes are...and how important they are to protecting patients' privacy.

- This bill was put together by MHA...An Association of Montana Health Care Providers. MHA is better known as the hospital association, and I want to express my appreciation for the many hours of hard work they put into developing this bill.

- HB 647 deals with this area in two ways: first, by making a number of changes in state statutes that reflect the changing health care world. Although I hate to say this, in many ways, this portion of the bill is merely a clean-up of existing language. These issues are covered in Sections 1 through 15. I won't spend much time here. I've asked MHA staff to outline the highlights of these sections for you.

- The second major section of this bill would bring state law into conformity with new federal laws governing the privacy of medical information that is transmitted electronically.

- I would like to focus my comments on the second half of the bill.

- For a number of years, the privacy of medical information in Montana has been governed by the state's Uniform Health Care Information Act.

- However, in 1996, the federal government enacted new standards for medical privacy. These new standards were part of the Health Insurance Portability and Accountability Act of 1996 – known as HIPAA. They take effect in April of this year, and they will make major changes in the requirements health care providers must follow to protect the confidentiality of patients' medical records and other patient information.

- HB 647 attempts to bring Montana's Uniform Health Care Information Act into conformity with these new federal standards.

- **Not all health care providers are subject to HIPAA.** The federal law contains an exemption for small groups – those with 25 or fewer employees – of providers and independent practitioners, if they are not performing standardized electronic health care transactions.

- For those providers who are exempt from HIPAA, the Montana Uniform Health Care Information Act will continue to govern their activities.

- For those providers who are required to comply with HIPAA, federal law trumps state law –

SENATE HEALTH & WELFARE
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DATE 3-12-03
BILL NO. HB 647

except in areas where state law is more stringent, in which case the state can choose to follow state law.

- Sections 16 - 24 specify the state statutes that would continue to be in effect, if this law passes. On all other privacy issues, the federal statute would prevail.

- By now you must be asking why we would go to all this trouble to sort this out. I know when I first read through this bill, I wondered the same thing. The answer is that we need to give providers clear guidance on what law they must follow.

- If this bill doesn't pass, both laws will be in force and there will be no coordination between the two. In my view, it's worth the trouble to sort this out now and not leave it to the courts to resolve these disputes.

Amendments to House Bill No. 647
3rd Reading Copy

Requested by Representative Bill Thomas

For the Senate Public Health, Welfare and Safety Committee

Prepared by Susan Byorth Fox
March 12, 2003 (1:06pm)

1. Title, page 1, line 10.
Strike: "50-16-205,"

2. Page 1, line 25.
Strike: "or"
Following: "dentists"
Insert: ", physician assistants-certified, professional counselors, or social workers"

3. Page 1, line 29.
Strike: "medical treatment"
Insert: "health services"

4. Page 2, line 1.
Strike: "medical or surgical care or"
Insert: "health"
Following: "services"
Insert: "and to control access to protected health care information"

5. Page 2, line 2.
Strike: "medical or surgical care or"
Insert: "health"

6. Page 2, line 3.
Strike: "an unemancipated"
Insert: "a"

7. Page 4, line 20 through line 24.
Strike: section 6 in its entirety
Renumber: subsequent sections

8. Page 7, line 11.
Strike: "consented"
Insert: "authorized"
Following: "writing"
Strike: "to"

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9. Page 10, line 23.
Following: "Sections"
Strike: "16"
Insert: "15"

10. Page 10, line 28.
Following: "sections"
Strike: "16"
Insert: "15"

11. Page 12, line 21.
Strike: "consented"
Insert: "authorized"
Following: "writing"
Strike: "to"

12. Page 13, line 10.
Following: "Sections"
Strike: "16"
Insert: "15"

13. Page 13, line 13.
Insert: "NEW SECTION. **Section 21. Method of compulsory process.** (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under [section 20(1)(b), (1)(d), or (1)(e)] or in a civil proceeding or investigation under [section 20(1)(i)], the person seeking compulsory process or discovery shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) of this section to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of [section 20] under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under [section 20(1)(b), (1)(d), or (1)(e)] or in a civil proceeding under [section 20(1)(i)], that the requirements of subsection (1) of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of [section 20] identified in the certification provides an appropriate basis for the use of compulsory process or discovery. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the

process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, when authorized by law, a health care provider may deny access to the requested health care information. If access to requested health care information is denied by the health care provider, the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes that the information should be protected from disclosure.

(4) When access to health care information is denied, the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in [section 22], and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under [section 20] and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure."

Renumber: subsequent sections

14. Page 13, line 19.
Following: "sections"
Strike: "16"
Insert: "15"

15. Page 13, line 21.
Following: "sections"
Strike: "16"
Insert: "15"

16. Page 13, line 24.
Following: "sections"
Strike: "16"
Insert: "15"

17. Page 13, line 26.
Following: "sections"
Strike: "16"
Insert: "15"

18. Page 14, line 2.
Following: "sections"

ROLL CALL

SENATE COMMITTEE: **PUBLIC HEALTH, WELFARE, & SAFETY** DATE: 3-12-03

NAME	PRESENT	ABSENT	EXCUSED
Jerry O'Neil - Chair (R)	X		
Duane Grimes - Vice Chair (R)	X		
Bob DePratu (R)	X		gone for first 40 min
John C Bohlinger (R)	X		
Brent R Cromley (D)	X		
John Esp (R)	X		
Dan Harrington (D)	X		
Trudi Schmidt (D)	X		
Emily Stonington (D)	X		

*Attach to each day's minutes

DATE 3-12-03

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: HB493, HB647, HJ19

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Jeanne Connor	449-3583	MHIMA	HB647	✓	
Julie Mariani	262-1231	MHIMA	HB647	✓	
Kathy Kenyon	238-2808	Deaconess Billings Clinic	HB647 HB493	✓	
Jerry Loble	444-1555	Dept of Labor	HB493		In Lt
Jamie Butler	442-6760	MMA	HJ19 HB647	✓ ✓	
~~Kathy Kenyon~~					
Bonnie Adee	444-9460	MT Ombudsman	HJ19 HB647	✓	
Steve Yeakel	443-1674	MT Council for Maternal & Child Health	HJ19	✓	
Pat Melby	442-7450	MT Med Ass'n	HB647	✓	
Bob Lovitt	439-5122	MT Med Ass'n / MT Psych Ass	HJ19	✓	
Al Smith	443-3184	MTLA	HB647	✓	
Jacqueline Lenmark	2-0230	Am Ins Assn	647	amdt	
George Wood	443-2200	Mt Self Insurers Assn	647	amdt	
Nancy Butler	444-7725	Mt. State Fund	647	amdt	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN JERRY O'NEIL**, on March 21, 2003 at 3:32 P.M., in Room 350 Capitol.

ROLL CALL

Members Present:

Sen. Jerry O'Neil, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Brent R. Cromley (D)
Sen. Bob DePratu (R)
Sen. John Esp (R)
Sen. Dan Harrington (D)

Members Excused: Sen. Trudi Schmidt (D)
Sen. Emily Stonington (D)

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Andrea Gustafson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 693, 3/5/2003; HJ 31, 3/10/2003; HJ 29, 3/10/2003
Executive Action: HB 681; HB 693; HB 647; HB 499

help her do a grey bill and went over it with the department to see what they would agree to and then to come back to him with what they could come up with.

Ms. Brown said she did get a copy and reviewed them. She said there were very few amendments with which the department would agree. She was willing to work with **Ms. Matthew-Jenkins** but did not think they would have a meeting of the minds.

SEN. O'NEIL asked if any of the amendments would be helpful to the public. **Ms. Brown** said she would have to look at them again. Some amendments did substantially change several provisions in the bill.

SEN. ESP suggested the department look at the amendments and see if there was anything of substance and bring the committee a report back Monday and look at it then.

SEN. GRIMES withdrew his motion to concur.

SEN. O'NEIL said he would like to see if the two could take 15 minutes to see what they could agree on and could they meet back Monday or Wednesday. **Ms. Brown** said Wednesday.

SEN. CROMLEY said **SEN. ESP** had raised the issue about the judge's signature and he asked the committee members to consider the papers he passed out concerning other judges input.

EXECUTIVE ACTION ON HB 647

Motion: SEN. GRIMES moved that HB 647 BE CONCURRED IN.

Discussion:

SEN. GRIMES passed out some amendments requested by the Mental Health Association. **EXHIBIT(phs60a05)**

Mr. Bohyer had some amendments given to him by Susan Fox for **REP. BILL THOMAS**, the sponsor of the bill. **EXHIBIT(phs60a06)**

Motion/Vote: SEN. GRIMES moved that AMENDMENT HB064711.adb BE ADOPTED. Motion carried 7-0.

Motion/Vote: SEN. GRIMES moved that AMENDMENT HB064701.asb BE ADOPTED.

Discussion:

SEN. GRIMES said this amendment was brought by the sponsor. He asked **Mr. Bohyer** if there were substantive change in it. **Mr. Bohyer** said on Page 1, Line 29 there was some additional description of who was included as far as providing health care information. It included physician assistants certified, professional counselors, and social workers. One section was eliminated from the bill. The term "medical treatment" was changed to "health services." The action of medical or surgical care would be removed from the validity of the consent of a minor under Section 41-1-402, which happened in a couple places and was replaced with "health services." The word "consented in writing" was changed to "authorized in writing," which happened on Page 7, Line 11 and Page 12, Line 21.

SEN. GRIMES asked **Mr. Bob Olson** to address, remind the committee the purposes of the amendment since it was a large amendment.

Mr. Olson said the amendments were the result of many other groups besides the hospitals to make sure the language comported to federal standards. The change of the word "consent" to "authorized," the federal document talked about was a request for authorization, not a request for consent. It was a housekeeping amendment. The section deleted was the section that touched on peer review processes on Page 4, Section 6 in the bill, due to concern by Mr. Smith. The amendment being proposed on Page 13, the method of compulsory process, that was the new section added back into the bill. They had some attorneys that deal with compulsory process that pointed out it was a state process, not a federal process and wanted to retain the standard when dealing with the local judicial systems. It was the language that currently existed in the Uniform Health Care Information Act for compulsory process of Montana. Page 14, Line 4 was another housekeeping amendment.

SEN. O'NEIL asked what did it do to the public's access to service. **Mr. Olson** said the statute that defined health care

professionals had fallen behind the statute where people were actually being licensed. Physicians' assistants had emerged in the last seven or eight years in Montana as a licensed health professional. This statute needed to catch up with that. The same would be true for professional counselors added about four or five years ago in a legislative session to expand that to a licensed profession. They were trying to catch up those people who were required to comport with the health care privacy requirements with those who were licensed as health professionals.

Mr. Bohyer said the amendments were drafted before the amendment **SEN. GRIMES** proposed and was adopted. Some amendments they were currently going over would drop off because they would not be needed anymore. Amendment 25 of Page 4 of the amendments would disappear. If other changes needed to made due to **SEN. GRIMES** amendment, he would make them.

Motion/Vote: SEN. GRIMES moved that HB 647 BE CONCURRED IN AS AMENDED. Motion carried 7-0 with SEN. STONINGTON voting by proxy.

EXECUTIVE ACTION ON HB 499

SEN. ESP moved HB 499 and he had an amendment on Page 7, Line 15, striking "in" through "department."

Motion/Vote: SEN. ESP moved that AMENDMENT # 620824SC.SJO BE ADOPTED. Motion carried 7-0 with SEN. STONINGTON voting by proxy.

Motion/Vote: SEN. ESP moved that HB 499 BE CONCURRED IN AS AMENDED. Motion carried 7-0 with SEN. STONINGTON voting by proxy.

Moved - Grimes - Carried

MHA -Requested Amendment to HB 647

Page 8, line 9

Following: "except"
Insert: (a) to any contact if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or any other individual; or
(b)

* * * * *

So, with the amendment, 50-16-1009(1) would read as follows:

(1) A person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except (a) to any contact if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or any other individual; or
(b) to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5, the Government Health Care Information Act, Title 50, chapter 16, part 6, or applicable federal law.

Senator:
We received a last minute request for this amendment to HB 647. It is okay with us if you could offer it with the package we discussed.

Katharine Donnelley
443-6820

SENATE HEALTH & WELFARE
EXHIBIT NO. 5
DATE 3.21.03
BILL NO. HB647

Amendments to House Bill No. 647
3rd Reading Copy

Requested by the American Insurance Association; State Compensation Insurance Fund; Montana Self-Insurers Association

For the Senate Public Health, Welfare and Safety Committee

Prepared by Dave Bohyer
March 17, 2003 (3:07pm)

1. Page 12, line 1.
Strike: "A"
Insert: "To the extent provided in 39-71-604 and 50-16-527, a"

2. Page 12, line 3 through line 11.
Following: "provider." on line 3
Strike: "The" through "law." on line 11

- END -

SENATE HEALTH & WELFARE
EXHIBIT NO. 6
DATE 3-21-03
BILL NO. HB647

ROLL CALL

SENATE COMMITTEE: **PUBLIC HEALTH, WELFARE, & SAFETY** DATE: 3-21-03

NAME	PRESENT	ABSENT	EXCUSED
Jerry O'Neil - Chair (R)	X		
Duane Grimes - Vice Chair (R)	X		
Bob DePratu (R)	X		
John C Bohlinger (R)	X		
Brent R Cromley (D)	X		
John Esp (R)	X		
Dan Harrington (D)	X		
Trudi Schmidt (D)			
Emily Stonington (D)			

*Attach to each day's minutes

Insert: "health"

6. Page 2, line 3.
Following: "~~state~~"
Insert: "a"
Strike: "an unemancipated"
Insert: "a"

7. Page 4, line 20 through line 24.
Strike: section 6 in its entirety
Renumber: subsequent sections

8. Page 7, line 11.
Strike: "consented"
Insert: "authorized"
Following: "writing"
Strike: "to"

9. Page 10, line 23.
Following: "Sections"
Strike: "16"
Insert: "15"

10. Page 10, line 28.
Following: "sections"
Strike: "16"
Insert: "15"

11. Page 12, line 1.
Strike: "A"
Insert: "To the extent provided in 39-71-604 and 50-16-527, a"

12. Page 12, line 3 through line 11.
Following: "provider." on line 3
Strike: "The" through "law." on line 11

13. Page 12, line 21.
Strike: "consented"
Insert: "authorized"
Following: "writing"
Strike: "to"

14. Page 13, line 10.
Following: "Sections"
Strike: "16"
Insert: "15"

15. Page 13, line 13.
Insert: "NEW SECTION. **Section 21. Method of compulsory process.** (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under [section 20(1)(b), (1)(d), or (1)(e)] or in a civil proceeding or investigation under [section 20(1)(i)], the person seeking compulsory process or discovery shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) of this section to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of [section 20] under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under [section 20(1)(b), (1)(d), or (1)(e)] or in a civil proceeding under [section 20(1)(i)], that the requirements of subsection (1) of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of [section 20] identified in the certification provides an appropriate basis for the use of compulsory process or discovery. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, when authorized by law, a health care provider may deny access to the requested health care information. If access to requested health care information is denied by the health care provider, the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes that the information should be protected from disclosure.

(4) When access to health care information is denied, the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in [section 22], and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under [section 20] and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure."

Renumber: subsequent sections

16. Page 13, line 19.
Following: "sections"
Strike: "16"
Insert: "15"

17. Page 13, line 21.
Following: "sections"
Strike: "16"
Insert: "15"

18. Page 13, line 24.
Following: "sections"
Strike: "16"
Insert: "15"

19. Page 13, line 26.
Following: "sections"
Strike: "16"
Insert: "15"

20. Page 14, line 2.
Following: "sections"
Strike: "16"
Insert: "15"

21. Page 14, line 4.
Following: line 3
Insert: "(7) A health care provider who relies in good faith upon certification pursuant to [section 21] is considered to have received reasonable assurances and is not liable for disclosures made in reliance on that certification."

22. Page 14, line 9.
Strike: "9"
Insert: "8"

23. Page 14, line 11.
Strike: "9"
Insert: "8"

24. Page 14, line 12.
Strike: "16"
Insert: "15"

25. Page 14, line 13.
Strike: "16"
Insert: "15"

- END -

MONTANA SENATE
2003 LEGISLATURE
PUBLIC HEALTH, WELFARE, & SAFETY COMMITTEE
ROLL CALL VOTE

DATE 3-17-03 BILL # HB647 AMENDMENT # ~~HB0647.020.02~~ 620825sc.sjc

MOTION: _____

NAME	AYE	NAY
Sen. Bob Depratu	X	
Sen. John C Bohlinger	X	
Sen. Brent R Cromley	X	
Sen. John Esp	X	
Sen. Dan Harrington		
Sen. Trudi Schmidt		
Sen. Emily Stonington	X	Proxy
Sen. Duane Grimes, Vice Chairman	X	
Sen. Jerry O'Neil, Chairman	X	

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